

## **EXHIBIT 7**

### **EXPERT REPORT OF NEAL M. BURNS**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

HILL HOLLIDAY CONNORS COSMOPULOS,  
INC., d/b/a ERWIN-PENLAND,

Plaintiff,

v.

JEFFREY GREENFIELD and  
1<sup>st</sup> APPROACH, LLC,

Defendants, and Third-Party  
Plaintiffs,

v.

CELLCO PARTNERSHIP d/b/a VERIZON  
WIRELESS, and JOSEPH A. ERWIN,

Third-Party Defendants.

CIVIL ACTION NO. 6:08-3980-GRA

**Hon. G. Ross Anderson Jr.**

**EXPERT WITNESS REPORT OF DR. NEAL M. BURNS**

## **1. Background and Qualifications**

I, Dr. Neal M. Burns, offer the following statements, opinions and declarations:

I am a tenured professor in the Department of Advertising and Public Relations at The University of Texas at Austin. I serve as Director of The Center for Brand Research for The College of Communication and am the elected member from The College of Communication to the University Faculty Council. I am a consultant to advertising agencies and media companies and am actively involved, also in a consulting role, in national and international venture capital and business communities. I am also the Founder and Director of The Department of Advertising's Graduate Account Planning Program. Courses in this program focus on developing business strategy and effective communication for traditional and experiential, digital clients and advertising agencies who routinely request brand and strategy reviews. During the past six years these clients have included Wells Fargo Banks, Chiat NYC, American Airlines, Austin Lyric Opera, Citi Bank, General Motors Finance, DDB Dallas, Motorola/FreeScale, NetSpend Inc., and Texas Gas Service.

I am a member of the Advisory Boards of Mpower Labs (Austin), Sands Research (San Antonio) and Grinshot, LLC (San Francisco.) In 2008, after an invited lecture and designing a research program on AIDS prevention communication, I was appointed an Adjunct Full Professor at the University of California, San Francisco. There, I am working on projects to help improve the communication resources in the USA and in Africa dealing with HIV-AIDS. I have published and presented more than 75 articles and papers and my work and that of our agency has been honored with dozens of advertising awards. I am, in the midst of this changing technological, economic and media environment, an expert in advertising practice, new business pursuit and branding.

I received my doctorate in psychology and neurophysiology from McGill University (1958) and worked under Donald Hebb – a pioneer in brain function and learning. Our work was considered fundamental and groundbreaking. Grants we submitted were well funded and writing them was a valuable exercise in learning how to sell ideas and projects. After I completed my doctoral work, I was offered several post-doctoral academic appointments. I declined the post-doc opportunities and chose instead to accept a position as Head of Psychopharmacology at Parke Davis & Co. in Detroit. The laboratory and facilities there were state-of-the-art, and I applied myself to intense searches for new compounds – tranquilizers and drugs to mitigate sleep disorders and epilepsy. Thereafter I took a job at NASA as Head of the Environmental Stress Branch of the US Navy's Air Crew Equipment Laboratory, working as a senior staff scientist on "Project Mercury" with the Gemini and Apollo Teams.

Some of my responsibilities included presenting budgets to congressional sub-committees, writing proposals and entering the public debate on what value space exploration would be to American citizens. I left NASA in 1962 and accepted a position as Senior Staff Scientist with Honeywell and moved to Minneapolis.

After 4 years I was named Director of Marketing for the Systems & Research Division at Honeywell Inc. For the next 6 years I worked to re-brand Honeywell, a Fortune 100 company, extending its product line and bringing it into a new technological era. I worked extensively with Honeywell's advertising and marketing firms to develop successful strategic objectives that changed the market image of Honeywell. Honeywell would no longer be perceived as a round thermostat on the wall but instead as a high technology brand that was a leader in aerospace, medical diagnostics, cameras and computers. We encouraged community-based initiatives that emphasized the importance and the wealth of the research facilities Honeywell owned. Later, in my own advertising work, I used

these practices to help sell our agency's creative insights regarding consumer preferences and competitors' campaigns.

In 1972, I left Honeywell to found my own marketing and advertising firm called The Burns Group, Inc. In 1986, The Burns Group, Inc. and Carmichael Lynch Advertising joined forces and became one of the largest and strongest agencies in Minneapolis. The agency worked with several major American brands – among them Mack Truck, American Standard, Rollerblade, 3M and Harley-Davidson. Initially, I served as Director of New Business in the agency and was primarily involved in growing the firm. From 1990 to 1997 I was Senior Partner and Director of Research and Account Planning. The research and creative teams and management style we put in place firmly established Carmichael Lynch as a branding agency and we succeeded in building iconic American brands (e.g. Harley-Davidson) while other efforts re-positioned and re-branded companies that had lost market share (e.g., Mack Truck.) In 1997 I left Carmichael Lynch when I was offered the Full Professorship I now hold in the Advertising Department at The University of Texas at Austin.

I became involved with NASA again in 2004 when NASA asked the administration of The University of Texas at Austin to allow me to accept a government assignment to develop the NASA brand, promote its programs and create a positive public image. I joined the management team at NASA Headquarters in Washington. A portion of the NASA press release follows:

*NASA Administrator Sean O'Keefe today named Dr. Neal M. Burns to be Special Assistant to the Administrator and acting Chief of Strategic Communications, effective immediately. Burns is Director of the Center for Brand Research at the University of Texas at Austin.*

*Burns' chief responsibility will be to develop agency-wide communications strategies, by assessing NASA capabilities and resources and refocusing them throughout the agency, to better communicate the Vision for Space Exploration for both internal and external audiences.<sup>i</sup>*

My first efforts at NASA were to provide focus and direction for public relations and communication processes and to build consistency in the use of key icons and images. The relationships between headquarters and the field stations were strained and with the support of the Administrator we initiated internal video meetings, web site reviews and new communications tools to create a sense of unity and purpose. Key objectives like future space exploration and Mars Watch were better articulated for both congressional scrutiny as well as public understanding. The negotiations between the USA and the Soviets were critical in terms of continued support of the space station and future exploratory launches and I participated in that work as well. We re-defined the NASA brand and created a sense of excitement about it–doing so was both difficult and tremendously important for the agency's future. The Shuttle Columbia disaster had grounded all shuttle flights and the agency's technology and existing management were all under close scrutiny. After six months I returned to the University full time.

For additional information, please refer to Appendix 1, my Curriculum Vitae.

## **2. Summary / Basis of Opinion**

I reviewed the material provided to me and conducted research concerning the advertising and marketing issues in this case. After doing so, I find no support for Greenfield's claim as asserted in his counterclaims, that the ideas and materials in question are proprietary or represent trade secrets. The elements presented in the First and Second pitch are not unique or protectable whether they exist independently or in combination. Additionally, none of the marketing techniques and tactics that Greenfield asserts as his trade secrets are novel or unknown.

It is my understanding that neither the First or Second pitch, as defined in Greenfield's counterclaims, were accepted as presented. Furthermore, in the absence of any formal agreement by both parties stipulating payment for consultant services rendered, Greenfield is not entitled to any compensation from either the agency Erwin-Penland (EP) or the client Verizon Wireless (VZW).

Reality shows that feature category competition (dance, singing, family dysfunction) are well established advertising vehicles. The Fox Network reality series *American Idol* (debut in 2002) was based on the British series *Idol*, and followed aspiring young singers from first audition to a brush with superstardom. The format Greenfield claims to have suggested for *How Sweet the Sound* (HSTS) was remarkably similar to that of *American Idol*. In *American Idol*, 100 contestants, and then ten finalists were selected for each 90-minute episode by a panel of judges. The series' "entertainment value" was manifested in its competitive audition process. As branded entertainment the show has several major sponsors and a large number of product placements (4,151 in its first 38 episodes during season 7, according to Nielsen Media Research). Coca-Cola is a major sponsor in the United States, and all the judges, hosts, and contestants are seen consuming beverages in containers that bear the Coca-Cola logo. Contestants and host are shown gathering for a "Keeping it Real" segment between songs in the "Coca-Cola Red Room," the show's equivalent of the traditional green room. Products from the Ford Motor Company and AT&T cellular also receive prominent product placement.

Greenfield claims that it was his unique and protectable idea to use gospel as an entertainment source, and that doing so was a fresh programmatic concept invented by him. His claims are unfounded. Gospel music has in fact been used as branded entertainment for decades. Gospel choirs have been in the electronic media for more than 70 years and it is well established that gospel music is accepted and popular for large and diverse audiences. The currently employed production techniques used to disseminate gospel across many media are extremely sophisticated, and underscore a lengthy investment in its development as a mode of entertainment.

### **Branded Entertainment: Origins, Impact and Audience**

In the early days of radio, programs were divided into "sponsored shows" (shows with paying advertisers), and "unsponsored shows" where the broadcast and content were paid for by a radio station. Sponsored shows were created entirely by the company behind the show; advertisers and their agencies were completely in charge of the show's content and the content usually contained large doses of advertising. Major stars received second billing to the advertiser's first, and programs like *The Canada Dry Program Starring Jack Benny* or *The Lux Radio Theater of The Air* were obviously being brought into the living rooms of America by the brands they saw when they shopped. It was the 1930's and it was the time of Branded Entertainment.

While Dr. Fournier, Greenfield's expert, has offered an historical rationalization to "explain" branded entertainment, she does not discuss the origins of the concept or the mechanisms of its execution as these relate to the case at hand. In considering Greenfield's claim, reviewing the documents in my possession and examining the relevant literature, I noted that emotional connections are strongly emphasized in advertising strategy. Gobe says it well; "The shift in thinking is from asking how we can motivate consumers to buy our product to asking instead how we can touch our consumers' lives."<sup>ii</sup> This is an important concept especially in the context of gospel programming, which aims to create a sense of intimacy and proximity for an audience. As a medium, television creates a distance between content and viewer, and as an experiential platform for gospel music, it could never compete with the verve and energy of live performance to carry home a message.

The following release from July 2005 is but one of several examples of gospel marketing partnerships that clearly illustrate that the descriptions of Greenfield's contribution as "break through" or representative of a new understanding of the entertainment business are not accurate:

*Gospel Music Channel is establishing a multi-platform marketing initiative to support the show. This initiative will include marketing partnerships with local radio stations and churches, advertising spots during Gospel Music Channel's primetime line-up, a direct mail campaign, and a strategic local and national public relations campaign.*

*The company has reached a Foundation Marketing Partnership agreement with The Ford Division of Ford Motor Company. As part of this agreement, Ford will be the lead sponsor and exclusive automotive advertiser for "Gospel Dream," and will have a presence during the program's auditions in seven U.S. markets, as well as the Atlanta-based semi-finals and season finale. This will include integration of a Ford vehicle into the programming, with additional opportunities to be announced.<sup>iii</sup>*

A similar case (and there are several others) was reported in *PR Newswire*, August 29, 2002, with the headline "Chevrolet Will Present the 'Come Together and Worship Tour' With Michael W. Smith, Third Day and Special Guest Max Lucado. The Come Together and Worship Tour featured 16 concerts and was slated for the month of November, 2002. Chevrolet's research of the Contemporary Christian Music industry and their first-hand work with Third Day showed that the demographics of the gospel fan base was a match for Chevrolet's target audience -- families and adults 35 to 54 with disposable income. This audience was similar in some ways to that desired by both Captain D's and VZW. Chevrolet supported the tour nationwide and enhanced its presence in several markets by featuring vehicle displays and other types of signage. In 2002, well before Greenfield's presentation of his alleged trade secrets, Chevrolet was involved in integrated experiential marketing efforts that included increased spending on local advertising, direct mail, investment in community relations, and hands-on experiences (trial drives, for example.)

Delivering an important and memorable collective social experience is a major component of the success of a branded entertainment experience. The live performances of the EP, VZW campaign deliver a sense of realism and connection – unmediated, as the Memphis concert illustrated, by cameras and directors' points of view. Torsten Nilson presents the concept of the 'customized brand' – essentially adapting the brand and programmatic content to the interests and needs of the desired market segment.<sup>iv</sup> He explains and illustrates using numerous examples how companies can gain competitive advantage by adapting the total marketing mix to different customers, regardless of market sector. This is precisely what the EP advertising campaign did; they demonstrated an excellent understanding of their target customer and did the required research to support that understanding. They selected content and means of delivery that spoke to their audience in familiar and easily understood ways. In the end, the product had a connection to the local community, which resulted in the impression that VZW products and service were valuable and desirable.

It is Greenfield's oft-repeated idea to attempt to put on the air a variant of *American Idol* or a similar type of reality-based contest television show. That he even considered this format an essential advertising vehicle in the 2006-2007 time period overlooks - or certainly does not fully consider - the importance and power of the web and social media. Most contemporary media research includes significant skepticism about the effectiveness of TV in reaching any desired audience. In Fournier's

report, television advertising is mischaracterized as only an entertainment vehicle but that is not what the business of television is about. Television's customers are not the viewing audience but the advertisers. Television does not sell the shows – rather it tries to sell the shares of the viewing audience that it can deliver to current and potential advertisers. And in an environment with declining audience and increasing CPM<sup>v</sup> the fundamental business model of television is severely challenged.

Understanding the importance that disruptive media break-through can bring (e.g., the live concert series targeted geographically at desired demographics) and the effectiveness and engagement this approach possesses in building brand trial and loyalty can be easily misunderstood because of comparisons to traditional media costs. Television (network, spot and cable) and radio (network and spot) advertising costs are typically measured in CPP (cost per rating point); newspaper and magazine advertising costs are more often measured in CPM (cost per thousand). At best these are cost indices rather than measures of effectiveness or engagement. In an era of audit and measurement, where clients demand that agencies produce evidence of an ROI (return on investment) for the dollars invested in reaching their desired audience, experiential campaigns excel in terms of what they deliver.

### **The Issues Concerning Gospel and Media**

In reviewing the representations concerning Greenfield and the novelty and hyperbole surrounding the “program details on the Choir Competition Big Idea” it is unusual not to reference the background and basis of the approach. Some markets (e.g., Detroit metro) and sponsors were early adopters of the gospel sound and the single sponsor approach from the 1930s on, with African-American singers and musicians appearing regularly. In 1932 and 1933 Paul Robeson was the featured singer on programs sponsored by General Electric and Eastman Kodak. At the same time Ethel Waters had her own program sponsored by the American Oil Company.

Thus the broadcast of gospel music – particularly on media targeted to the African-American audience was a well-established part of electronic media offerings more than 70 years ago. In October 1933, station WBZ (Boston) reported that more than one percent of its airtime was devoted to African-American spirituals. This figure becomes impressive, however, when it is noted that this was a larger percentage of broadcast time than that given to detective dramas, political speeches, or quiz shows at that station. The interest in gospel music probably was responsible for the CBS decision to broadcast from the Church of God in Washington, D.C., the religious services of the Elder Solomon Lightfoot Michaux, a feature which irregularly appeared on radio until the 1950s.

Finally, if historical reference and understanding was absent from the reach of Greenfield and Dr. Fournier, the failure to mention the contemporary efforts and success of Elvin Ross (music composer, CEO of SONHO Entertainment and President of *Full Gospel*) and famed playwright Tyler Perry and their work in this genre is even more remarkable. Ross and Perry's use of gospel in movies and television (in large part directed to the market segment Verizon seeks) and the digital conversations on Twitter, Facebook, blogs and wikis offers clear current evidence of the ubiquitous presence of this programmatic direction and integrated marketing approach.

The Gospel Music Channel<sup>vi</sup> was launched on October 30, 2004, and the network's program schedule features all styles of gospel music targeted to all age groups and demographics. In 2005 the Channel announced that it had established a multi-platform marketing program and foundation partnership with The Ford Division of Ford Motor Company. As part of this agreement, Ford was to be the lead

sponsor and exclusive automotive advertiser for "Gospel Dream," with a presence during the program's auditions in seven U.S. markets, as well as the Atlanta-based semi-finals and season finale. The initiative included marketing partnerships with local radio stations and churches, advertising spots during Gospel Music Channel's primetime line-up, a direct mail campaign, a vehicle giveaway, and a strategic local and national public relations campaign.

### **Agency Practice and Consultant Relationships**

It is fairly common for advertising agencies to use a variety of consultants or specialists for service to existing clients and to augment an agency's efforts in new business pitches. Consultants can provide additional resources, different skill sets and records of achievement that an agency needs for a particular project. Sometimes the addition of a consultant – particularly in work with existing clients – provides a face or perspective that is new for the client and supports the belief that "their agency" is at the bleeding edge and always has something fresh to discuss.

In the Fournier Expert Report (p.6) the position is taken that:

"The HSTS branded entertainment program that EP and Greenfield shared with VZW, while reflective of Greenfield's views on branded content, was not characteristic of the brand strategy work that advertising agencies were doing at that time."

In fact, the strategy of embedding the client's brand in the content and presentation of entertainment was an agency staple for years. A survey released in 2005 by the Association of National Advertisers found 63 percent of the total number of respondents (118 senior-level members) had participated in branded-entertainment projects in the past year, and 80 percent indicated they thought such efforts would be incorporated into their future upfront TV deals.

Strategic considerations were not part of the material presented in the Second Pitch. Strategy generally refers to a plan to accomplish the corporation's objectives and is different in substance from tactics – best considered as the actions that are taken to execute the firm's strategy. Tactics usually involve a series of relatively practical and procedural decisions, like media mix, audience to target, time and resource allocation. The April 26, 2006 Power Point presentation entitled "How Sweet The Sound" includes output from Greenfield dealing only with production issues.

In Captain D's new business pitch, 43 slides comprise the Power Point presentation. In the second slide EP presents "The Team":

- Shannon Wilbanks, *Business Development*
- Joe Erwin, *President*
- Allen Bosworth, *Director of Client Services*
- Gretchen Erwin, *Director of Media*
- Roger Beasley, *Director of Brand Strategy*
- Andy Mendelsohn, *Executive Creative Director*
- Bill Reynolds, *Associate Media Director*
- Cynthia Davis, *Director of Account Planning*
- Ty Thornhill, *Account Supervisor*
- Nika White, *Account Supervisor*

Greenfield and 1<sup>st</sup> Approach, LLC are not mentioned as team members or active consultants in the Power Point presentation. After a fairly detailed description of competitive influences, pricing and special offers the creative strategy of “authenticity” is put forward and compared to major competitors in the space. New possible offers that will be perceived as relevant and of value are described and the results from some preliminary consumer tests are presented. The set-up here is essentially classic major agency practice. The credentials and other clients of EP are presented, the importance of understanding the market and the consumer are emphasized, the energy and competence of the agency’s research and strategic thought are well described. It is this work that is followed by a suggested position and tone of voice and then preliminary views as to the ways in which this may be implemented - as well as special consideration for a Seafood restaurant to offer Lenten dishes - are discussed. None of this work reflects any ideas about television show competitions, problems and solutions for TV production or other evidence of Greenfield’s input. It is not until slide 41 that the HSTS concept is mentioned.

In that slide the following five creative execution concepts are displayed:

- “Veggie Plate Combo”
- Parking lot event: Free fish-fry
- Direct Mail “Cluster Bomb”
- Old Bay co-branded promotion
- Sponsor a fishing show

The next slide (42) offers a general description of next steps – which do not include HSTS concepts for further consideration.

The Captain D’s Leave behind piece (CD\_Leave\_Behind.pdf) summarizes the earlier Power Point presentation and answers some specific second round or finalist questions. Here Branded Entertainment is mentioned as part of an integrated marketing approach and the slide states that EP will have access to specialized services from its parent company and its affiliated agencies. With Interpublic’s (IPG) approximately 40,000 advertising and marketing professionals and revenues in 2008 of US \$6.9 billion, the scope of specialized services IPG possesses, and the resources and team residents within EP, the agency’s ability to mount and accomplish any program it chooses to offer is a solid commitment.<sup>vi</sup> Greenfield’s presence is again missing.

In closing, my review of this portion of the Greenfield claim shows that neither he nor 1<sup>st</sup> Approach contributed any unique strategic thought processes or recommendations. The segmentation discussed led to media choices with creative based upon the position of authenticity and demonstrable support of the position so that the message selected would resonate with the consumer. Challenged to suggest a Lent promotion, EP focused on a segment the called “Responsibles” and the belief that that segment could be reached via TV, by selecting specific dayparts and programming with appeal. From the evidence provided no part of this approach is a product of the EP association with Greenfield.

Greenfield’s claims and Fournier’s report include misleading arguments concerning EP’s status as agency of record for VZW. A quick note about the meaning of the term AOR (agency of record) is in order. In Dr. Fournier’s opinion AOR is a phrase that limits such an agency as one that is authorized by an advertiser to buy advertising space and/or time on its behalf. With that limit and restriction Dr. Fournier goes on to suggest that EP sought the affiliation with Greenfield because it did not have

the authority or consent of its client to study such matters as Branded Entertainment. Thus Greenfield believes that EP, because of AOR status, needed his support to compete. In the strictest sense the definition offered in their report loosely describes the way in which AOR may have been defined in the last century and that arrangement recognized the relationship with media and with media commissions as a significant portion of agency income. In fact, the media contract was drawn initially by the American Association of Advertising Agencies (4A's) and assured the media – since member agencies needed to submit balance sheets that showed the financial strength of the agency – that the AOR would pay its bills. I submit that AOR has no such restriction in current business. Advertising agencies today have a breadth of services that range from digital design to experiential exhibits and events. A recent example is well illustrated by the following Volkswagen announcement:

*August 17, 2009.*

*Volkswagen of America, Inc. announced today that they are placing their agency of record assignment up for review. The agency of record is responsible for all aspects of marketing and advertising and is currently managed by Crispin Porter + Bogusky*<sup>viii</sup>

There was nothing groundbreaking about the interdisciplinary and interactive approach that EP was suggesting to its clients. Rather it reflected a well thought out approach that – properly executed – would support their client's objectives. Part and parcel of the EP approach was the inclusion of effectiveness measurement in their work involved in this case. In wrapping up the EP Captain D's pitch the following points are included in their plans for the "First 60 Days":

- Establish Key Operating Indicators to Judge Success
- Prepare for Baseline Tracking Wave
- Conduct Thorough Media Coverage Analysis/Create Calendar
- Analyze Online Presence and Develop Goals
- Create Budget Tracking

Strategic thinking by advertising agencies today includes an assessment of the effectiveness and engagement of their campaigns. This assessment was part of the EP proposed program and was clearly an indication of the agency's sensitivity to evaluation and return on the client investment. In a similar fashion the gospel music suggestion EP made to VZW became a vehicle for targeted engagement for the audience of interest – namely the African American community resident in those cities in which VZW desired more market penetration. As the dynamics of consumer and communication channels change, marketers are seeking new and better ways to measure the effectiveness of their programs and justify their marketing spend.

Another error in the claim Greenfield's expert makes concerns the issues surrounding the award of an Effie. The comments concerning the Effie Award earned by EP attribute an unwarranted degree of financial gain and future success to the award. In several cases Effie Award winners have been surprised at the fact that the agency's relationship with the client for whom the work was done ended almost simultaneously with receipt of the award. In other cases the Award did not serve to retain other agency business. In 1986, for example, Chiat Day – long recognized as a creative and strategic powerhouse in the advertising business - won an award for their work on Pizza Hut only to find out that same day that Nike, a major client, had fired them. J. Walter Thompson won the Gold Effie for their Ryder Truck campaign and shortly thereafter was terminated as agency of record by Ryder.

The acquisition and maintenance of accounts in the advertising business is complex and at times almost totally subjective. Accounts change hands sometimes because a new product manager has been hired and that person prefers to work with a known agency; because budget cuts create change of direction and of agency; because competitive changes in pricing or distribution cause an agency shuffle; and sometimes because the CEO's brother-in-law did not like a TV commercial.

### **3. Conclusions and Summary**

In agency practice there is no support for the Greenfield claim of being "co-owner of the Project". There is no contract that I have seen between these parties. The issue for Greenfield and 1<sup>st</sup> Approach is a failure to recognize the ongoing discussions and problem solving that are part of the strategic dialog between an advertising agency and their client. The suggestion of launching a TV show, which by metaphor is best described with reference to current efforts that involve contests and high level production, is not a material fact in deciding to award an agency the funding for a new campaign. The long standing relationship between EP and VZW, the understanding by the agency of the corporate objectives of their client, the media and research analysis capability that exists and the tremendous set of specialized assets that are at the core of their parent, Interpublic, are the reasons for VZW's confidence in and award of additional business to EP.

To the extent that Greenfield had discussions and offered some slides for inclusion in the presentations by EP, such efforts can only be considered speculative (or "spec") work.<sup>ix</sup> Virtually any reference on advertising agencies and speculative work points out the essential risk involved. Seeking out new business opportunities and being willing to participate on a speculative basis enables ad agencies, consultants and freelancers to be open to all new business opportunities with no guarantee of compensation.

### **4. Terms of Engagement**

I have been engaged by the law offices of Goodwin Procter, LLP and McGuireWoods, LLP, in connection with their representations of Erwin-Penland (EP), Joseph Erwin and (VZW) respectively in the action brought by Jeffrey Greenfield and 1st Approach LLC (Greenfield.) I am being compensated at the rate of \$400 per hour.

I have been asked to consider the issues Greenfield has raised concerning his appropriate and earned compensation for his efforts in presenting new business ideas to EP clients and the basis and industry custom concerning that relationship. In preparing this report I have examined the nature and uniqueness of the ideas and work produced by Greenfield, the general topic of branded entertainment, and the current media environment given my experience with advertising agency business practice. In the context of preparing this report, I have reviewed certain documents made available to me.

### **5. Prior Service as Expert (Last Four Years)**

1. I provided a report, analysis and expert testimony based on advertising billing for real estate sales in Austin, San Antonio and the Rio Grande Valley, (2005).

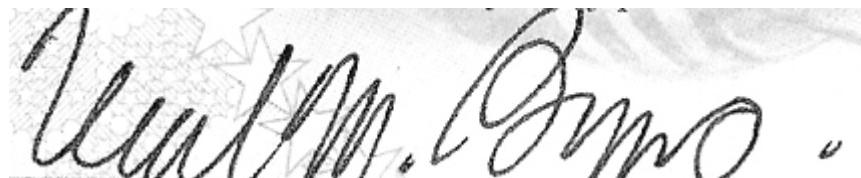
## **6. Documents Reviewed**

I have reviewed the documents listed below, ordered by reference identification number:

- 1a. #24.1 – First Amended Counterclaim and Third Party Complaint.pdf
- 1b. Aug 08 Demand Letter from Greenfield.pdf
- 1c. Erwin-Penland Complaint. Pdf
- 1d. Sep 08 Response by EP.pdf
- 1e. 06 – EP000460.pdf
- 1f. 08 – Verizon Answer
- 1g. CD\_leave\_behind.pdf
- 1h. CDPresentationRev5.pdf
- 1i. Microsoft PowerPoint – NOBATES00449\_ppt\_Read-Only\_.pdf
- 1j. Erwin Penland\_Greenfield—Confidential Undertaking.doc
- 1k. Greenfield Expert Reports Fournier.pdf
- 1l. Expert Witness Report of Larry Jay Namer
- 1m. Expert Witness Report Dr. Oliver G. Wood

### **End Note**

I have analyzed numerous documents in the preparation of this report and to the extent that new documents or deposition testimony becomes available I may refine and supplement my opinion. Therefore, the analysis and opinion expressed here is subject to revision or supplementation based on my review of additional documents and/or other developments. At trial I may refer to all or a portion of the above mentioned documents as well as such additional documents produced during this litigation and any demonstrable exhibits prepared for trial.

A handwritten signature in black ink, appearing to read "William G. Wood". The signature is fluid and cursive, with a large, stylized "W" at the beginning. It is set against a light gray background that features a faint, repeating geometric pattern of triangles and lines.

## Appendix 1

### CURRICULUM VITAE

#### PROFESSOR NEAL M. BURNS

#### EDUCATION

B.S. Psychology/Physiology, University of Illinois (1955)

M. Sc. Psychology, McGill University (1957)

Ph. D., Psychology, McGill University (1959)

#### PROFESSIONAL EMPLOYMENT SUMMARY

1997 - Present

**Professor**, Department of Advertising, University of Texas,  
Austin, TX

DIRECTS THE ACCOUNT PLANNING PROGRAM

at the Graduate level and industry research programs as well as  
teaching advanced advertising courses at the undergraduate level.  
Serves as Director, Center for Brand Research. Organizes and chairs  
Bi-Annual Conferences on Branding and Advertising Agency industry  
practice.

1986 - 1997

**Senior Partner**, Director of Research and Account Planning,  
Carmichael Lynch, Inc.,  
Minneapolis, MN

After Burns Group merger, managed the Research and Account Planning  
department of this internationally recognized, award-winning agency.  
Worked as a planner and also served as research and marketing resource  
person to both the Agency and its clients. Directed agency's new business  
program and the design and implementation of its presentation format.  
Chaired the Technology Assessment and Strategic Review Committees.  
Left to join the University of Texas at Austin coincident with the sale of  
the firm to Inter Public Group of Companies

1974 - 1986

**President & CEO**, The Burns Group, Inc.  
Minneapolis, MN

Founded and managed the company which focused on marketing and  
advertising needs in high technology sector. As the firm grew, it  
encompassed retail clients as well and attained a capitalized billing level of

\$12 million. The firm was noted for both its strong creative and well articulated research and marketing plans. In July 1986, The Burns Group, Inc. was acquired by Carmichael Lynch.

1971 - 1974

**Associate Executive Director**, Higher Education Coordinating Board  
St. Paul, MN

Assumed responsibility for integrated budget review and programmatic assessment for Minnesota's post secondary educational system. Directed staff studies and reported regularly to board of directors, legislators, legislative staff and the Governor of the State of Minnesota.

1962 - 1971

**Director of Marketing**, Systems & Research Division, Honeywell, Inc.  
Minneapolis, MN

Continued human engineering studies on Project Apollo. Successive promotions to Director of Marketing. Responsible for development of marketing plans and competing for research programs from federal agencies and major contractors. Served as Principal Investigator on several major NASA and DOD funded programs.

1959 - 1962

**Head**, Environment & Stress Branch, Air Crew Equipment Laboratory, Naval Air Material Center, Philadelphia, PA

Directed physiological and human factors engineering studies on aviation safety and survival. Tested cockpit design for the NASA project Mercury and Apollo astronauts. Organized and managed interdisciplinary research teams of civilian and military scientists and physicians.

#### **ADJUNCT STATUS ACADEMIC/ TEACHING POSITIONS**

2008 – Present

Professor , University of California San Francisco, Center for Aids Prevention Studies, San Francisco, CA

1994 - 1995

William Randolph Hearst Fellow, University of Texas, Austin

1994 - 1997

Lecture Ambassador, Advertising Educational Foundation (AEF)

1992 - 1997

Guest Lecturer, Carlson School of Management,  
University of Minnesota, Minneapolis, MN

1986 - 1992

**Adjunct Faculty**, School of Journalism and Mass Communication,  
University of Minnesota, Minneapolis, MN

1985-1993

Lecturer, Technopolis, University of Bari, Bari, Italy.  
Annual summer lecture series on advertising and high tech marketing

1965-1968

Research Scientist, Laboratory of Physiological Hygiene, University of Minnesota, Minneapolis, MN

1960-1962

Instructor, Army War College; Fort Lee, Virginia

## **REFERENCES**

**Lee Lynch**, Chairman and Founder, Carmichael Lynch, Inc.

Greenrox Partners LLC 800 LaSalle Avenue, #120

Minneapolis, MN 55402 (612) 373-5661

**Jeff Hunt**, CEO,

Pulse Point Group, Austin, TX 78703 (512) 426-6782

**Barry Twomey**, Principal

Texas Growth Fund, 111 Congress Avenue, Suite 2900,

Austin, TX 78701 (512) 322-3100

**Isabella Cunningham**, Professor and Chair

Advertising Department, University of Texas at Austin,

Austin, TX 78712 (512) 471-1101

**Bob Weinschenck**, CEO

Barfly Networks, 2800 Industrial Terrace, Austin, TX 78758 (512) 636-5200

## **PUBLICATIONS AND PRESENTATIONS\***

### **PUBLISHED ARTICLES AND COMMENTARY (Last 10 years)**

1. "Point of Involvement, Purchase and Consumption: The Delivery of Audience Engagement" In The Handbook of Research on Digital Media and Advertising, IGI Global. (In Press, to be published January 2010)
2. Digital Media: Point of Involvement, Purchase and Consumption. White Paper for Distribution via Restaurant Business Network, January, 2009.
3. A note on Brand and its likely meaning in the year 2005 and beyond. Advertising Express Journal, ICAFIU Press, January, 2005 (pp58-59)
4. ("Modernity." In J. McDonough (Ed.). "The Advertising Age Encyclopedia of Advertising." *Fitzroy Dearborn*. (2003).)\*
5. "Effect of varying incentives on the willingness to provide personal information in e-commerce." Journal of the Western Decisions Sciences Institute Proceedings. (April, 2002).\*
6. "Ethnicity based responses in Internet survey research." Proceedings of the ESOMAR Conference on Ethnicity. (July, 2000).
7. "A Review: Truth, lies and advertising by Jon Steel." *Journal of Advertising*. (Winter, 1999).

### **PRESENTATIONS (Last 10 years)**

1. Alternative Media, Brands and Look & Feel For The 21<sup>st</sup> Century Airport. Invited speaker at ACI-NA 18th Annual Conference, October 12, 2009
2. Perceptual Changes In Brand USA: Causal Factors. China Advertising Association of Commerce & Communication University of China, Beijing, China, May 27-30, 2009\*
3. Digital Brands & Media, Invited speaker at Persuasive Technology 2009 Meeting. Claremont College, California, April, 2009.

4. The Future of Account Planning: Where are we headed in Practice, Training and Scholarship? The Future of Account Planning. American Academy of Advertising, Cincinnati, Ohio, March 26-29, 2009.
5. The Branding of Institutions, Invited Speaker at The University of British Columbia Re-Branding Meeting, December, 2008
6. New Metrics for OOH Digital Signage. The Digital Signage Show, October, 2008, NYC.
7. A Look At Emerging Media Models, Invited speaker at The 2008 Summer Institute at Wallenberg Hall, August 2008, Stanford University.
8. Thoughts about Brands, Advertising and Alternative Media, Invited speaker at the Biennial Update Conference, University of Costa Rica, May, 2008, San Jose, Costa Rica.
9. Emerging Business Models. 9<sup>th</sup> International Symposium on Online Journalism, April 4 – 5, 2008, Austin, TX
10. Why Brand Airports Anyhow. Invited Address at the Airports Council International-North America Brand Conference, June, 2006 , Austin, TX
11. India: Is Brand Knowledge Related to Brand Attitude? The Second International Conference on Sustainable Heritage Development: Vietnam, Hanoi and HaLong Bay, January 2006
12. Advertising and Branding: Giving Commodities Value. Invited Address at the Utility Branding Conference-2005, June, 2005, New Orleans
13. Building a Strategic Communication Process Within NASA. Invited Keynote Address, American Astronautical Society, November 2004, Pasadena, CA
14. The Extension of The Concept of Brand to Cultural Event Marketing. Advertising Research Foundation (ARF) Annual Meeting, April, 2005, New York City.
15. Cultural Difference Reflected in Brand Meaning. Western Decision Sciences Institute Meeting,, Mexico, April, 2004\*
16. "Developing a Framework to Promote Higher Education to American Youth." International Pre-Conference, American Academy of Advertising Annual Conference, March, 2003, Broomfield, Colorado
17. "Cultural History and American Advertising." Invited Address at The New York Ad Club, 19 November 2002.

18. "Account Planning: A Strategic Advertising Process for Motorcycles and Education. Is Snake Oil?" American Marketing Association, New Orleans, LA. (April, 2002).
19. "An exploration of strategic planning processes in Chinese and Hong Kong ad Agencies." American Academy of Advertising, Newport, RI. (April, 2000).
20. "Defining account planning: interviews with leaders in the USA and the UK." American Academy of Advertising, Newport, RI. (April, 2000).
21. "Today's advertising agency – tomorrow." Invited address at the Convocation of The Monterrey Communications Academy, Monterrey, Mexico. (July, 1999).
22. "A comparison of Hispanic and Anglo advertising agencies using Internet interviewing and perceptual mapping techniques." Consumer Psychology Meeting, San Antonio, TX. (June, 1999).\*
23. "Digital Branding." American Academy of Advertising, Albuquerque, NM. (March, 1999).

\*Co-Authored Paper and/or Presentation

## BOOKS

1. *The Smart S.U.I.T. (Surprisingly Uninhibited Informed Training), A Training Program and Collection of Readings for Account Management*, Carmichael Lynch, Minneapolis, MN. (1991).
2. *Unusual Environments and Human Behavior*. McMillan, The Free Press, New York. (1963).\*
3. *"Handbook of Research on Digital Media and Advertising: User Generated Content Consumption."* IGI Global Publishers, (To be published January, 2010)

## NEW RESEARCH AND TEACHING INITIATIVES

Strategic Planning in Virtual Worlds, New Graduate Course, offered Fall, 2008 & 2009.

Developing Effective Health messaging: AIDS & HIV Advertising Research  
(With UCSF/CAPS, (2008 -2009)

Co-Chair AAA Pre-Conference "Nation Branding: By Us or Them" San Mateo, California,  
March 27, 2008

Developed and Chaired Center for Brand Research Conferences:

AdWakening Conference, AT&T Conference Center, May, 2009  
The Chaos 2006 Conference, University Club, November, 2006  
Niche Life Styles and Branding, National Press Club, Wash., D.C., February, 2004  
Branding and Rebranding in the 21<sup>st</sup> Century: A Transdisciplinary Approach,  
LBJ Library, May, 2003  
Consumer engagement with governmental, cultural and social initiatives (2003 – Present)  
NASA Means Business PSA Development, 2005  
Nation Branding and Perceptual Mapping, 2003 – Present  
The Center For Brand Research, (2002 – Present)

## **SERVICE**

### **National Governmental and Organizational Service**

Chair, Industry-Academic Liaison Cmte, Amer. Acad. Advertising (2008-2010)

Board Member, American Advertising Federation, Austin, TX (2005 – 2008)

Acting Director, Strategic Communications, NASA HQ (6/2004 – 9/2004)

Advisory Board and Consultant to the Administrator, NASA HQ (7/2003 – 2006)

Advisory Committee, American Advertising Federation, (2003 – 2004)

Editorial Board, Journal of Interactive Advertising, (2000 – Present)

Advisory Committee, New Media Initiatives, American Assn of Advertising Agencies (1984-85)

Chair and Member, National Academy of Sciences Highway Safety Committee (1972-1974)

### **At The University of Texas at Austin**

College of Communication Latino Media Studies Committee (2007 – Present)

College of Communication Dean Search Committee (2004-2005)

President's Grievance Tribunal Committee (2003)

General Faculty Representative , College of Communications (2002-2004; 2008 - Present)

University Grievance Committee (2003-2006)

Advertising Department, Chair Selection Committee Co-Chair (2002)

Advisory Board, Center for Customer Insight, Red McComb School of Business (2001- present)

Advertising Department, Graduate Admissions Committee, Member (2001-2002)

College of Communications, Diversity Committee, Member (2001-2002)

College of Communications, Identity Committee, Member (1999-2000)

College of Communications, Graduation Participation (Annually 1998 – 2003)

**In Austin Community:**

Board of Directors, Mpower Labs, Austin, TX (2007- Present)

Board of Directors, NetSpend Corporation, Austin, TX (2001- 2003)

Board of Directors, Congregation Shalom Rav, Austin TX (2003-2004)

Chair, Board of Directors, NetSpend Corporation, Austin, TX (2002)

Advisory Board, Dispute Resolution Center, Austin, TX (2001 – 2006)

Advisory Board, Concordia University, Austin, TX (2000-2001)

**HONORS AND AWARDS (Partial listing)**

Austin Ad Federation, recognized as “Educator of the Year”, 2006

Best Paper in Session: Western Decisions Sciences Institute Meeting, April, 2004

Various Professional and Creative Association Recognition/Awards 1975-1997) Including:

National Agricultural Marketing Association; First Place, Multimedia Show; Merit Awards,

Hotel Sales & Marketing Association International; Gold and Silver Awards,

Consumer Magazine and In-House Food and Bar

The Show, Gold, Silver and Merit Awards

American Marketing Association; Gold Effies for Advertising Effectiveness (Harley & Honeywell)

*Electronic Design*, Outstanding Creativity in 4-Color print

Business/Professional Advertising Association; Oliver Awards

**ACTIVE MEMBERSHIPS**

United States Account Planning Association

American Academy of Advertising

American Advertising Federation, Austin, TX

---

<sup>i</sup> NASA Press Release, Thursday, July 1, 2004, Source: [NASA HQ](#)

<sup>ii</sup> Marc Gobe, **Citizen Brand: 10 Commandments for Transforming Brands in a Consumer Democracy**, Allworth Press, October 2002.

<sup>iii</sup> “Gospel Music Channel to Premiere Gospel Dream Series this Fall,” **Business Wire**, July 7, 2005.

<sup>iv</sup> Torsten H. Nilson, **Customize the Brand: Make It More Desirable and Profitable**, John Wiley & Sons, December 2002, ISBN: 0470848227.

<sup>v</sup> In a traditional sense and for media buyers and planners today CPM functions as the established and trusted media delivery metric most frequently used to evaluate audience exposure to an advertisement. In the simplest sense, the formula for calculating CPM is: Cost of Ad / Audience Delivered x1000. However, some people – in error – will look at it as Cost of Ad / Number of Ads x 1000; that is not the CPM as done with traditional media. Rather, it is a calculation of the Cost-Per-Thousand Ads delivered, not the Cost-Per-Thousand Audience exposures delivered (i.e., impressions).

<sup>vi</sup> Gospel Music Channel is the first, advertiser-supported cable television network dedicated to the rich history and contemporary sounds of gospel music, its many styles and artists. Launched on October 30, 2004, the network's program schedule features artists' biographies, music specials, live concerts, and hosted music video blocks highlighting all styles of gospel music targeted to all age groups and demographics. The company was founded by cable television industry executives, Charles Humbard and Brad Siegel in April of 2004. Alpine Equity Partners L.P. and Constellation Ventures, a Bear Stearns company.

<sup>vii</sup> And, as a side note concerning the rise of experiential and sponsored branded entertainment, ten years ago the International Events Group reported that 5,200 companies spent \$6.8 B on event sponsorship with 11% of that sum spent on concerts and entertainment tours.

viii

[http://www.cartype.com/pages/4230/volkswagen\\_of\\_america\\_announces\\_agency\\_of\\_record\\_will\\_go\\_up\\_for\\_review](http://www.cartype.com/pages/4230/volkswagen_of_america_announces_agency_of_record_will_go_up_for_review)

<sup>ix</sup> Note: For some advertising agency new business presentations – often those in response to an RFP (Request For Proposals) – a modest fee is given to each of the agencies selected. In such cases it is not unusual for those free lancers and consultants asked to assist the agency to receive “token” compensation. This was not the case in the work referred to in this case.